

## Message Text

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ACTION EUR-12

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TO SECSTATE WASHDC PRIORITY 3671  
INFO AMEMBASSY BONN  
AMEMBASSY BRUSSELS  
AMEMBASSY LISBON  
AMEMBASSY LONDON  
AMEMBASSY OSLO  
AMEMBASSY PARIS  
AMEMBASSY THE HAGUE  
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C O N F I D E N T I A L SECTION 01 OF 02 MADRID 02299

BRUSSELS ALSO FOR USEEC

E.O. 11652: GDS  
TAGS: SHUM, PINT, SP  
SUBJECT: COURT MARTIAL OF MIME TROUPE SUSPENDED AFTER  
TWO OF SIX DEFENDANTS FLEE

1. SUMMARY: THERE HAS BEEN CONSIDERABLE LOCAL  
CONCERN EXPRESSED ABOUT THE PENDING PROSECUTION IN  
MILITARY COURT OF SIX MEMBERS OF A BARCELONA MIME  
TROUPE FOR "INSULTING" THE SPANISH ARMED FORCES IN  
ONE OF THEIR PLAYS. CONSIDERATION OF THE CASE WAS TO  
BEGIN FEB 28. HOWEVER, IT WAS SUSPENDED WHEN THE  
LEADER OF THE TROUPE ESCAPED FROM POLICE CUSTODY,  
ANOTHER DEFENDANT DISAPPEARED WHILE ON PROVISIONAL  
LIBERTY, AND ONLY FOUR OF THE SIX ACCUSED APPEARED  
FOR TRIAL. THE FOUR ARE NOW BEING HELD IN "PREVENTIVE  
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DETENTION." WE PROVIDE BELOW A GENERAL OUTLINE OF THE  
CASE, BASED ON INFORMATION FROM AMCONGEN BARCELONA.  
END SUMMARY.

2. THE MILITARY TRIAL OF ALBERT BOADELLA AND FIVE  
OTHER MEMBERS OF HIS MIME TROUPE, ELS JOGLARS (THE  
MINSTRELS), WAS SUSPENDED FEB 28 AFTER BOADELLA ESCAPED

FROM POLICE CUSTODY FEB 27 AND ONE OF THE FIVE OTHER DEFENDANTS, ALL OF WHOM HAD BEEN FREE ON PROVISIONAL LIBERTY, DISAPPEARED. ALTHOUGH FOUR OF THE DEFENDANTS, ACCOMPANIED BY THEIR LAWYERS, ARRIVED ON TIME FOR THE TRIAL FEB 28, THE PRESIDING OFFICER, AN ARMY LT.COL., SUSPENDED THE PROCEEDINGS, CITING THE PROVISIONS OF THE MILITARY PENAL CODE WHICH AUTHORIZE SUCH A SUSPENSION IN THE ABSENCE OF THE ACCUSED. THE FOUR DEFENDANTS WERE THEN PLACED UNDER "PREVENTIVE DETENTION," TO WHICH THEIR LAWYERS IMMEDIATELY OBJECTED, WHILE THE AUTHORITIES SEARCH FOR THEIR TWO CO-DEFENDANTS.

3. THE ELS JOGLARS GROUP WAS ARRESTED IN DECEMBER 1977, AND CHARGED WITH INSULTING THE MILITARY IN THEIR PLAY, LA TORNA, WHICH WAS A BITING ANTI-FRANCO REGIME SATIRE CENTERING AROUND THE 1974 EXECUTION OF CATALAN ANARCHIST PUIG ANTICH AND POLISH SEAMAN HEINZ CHEZ. (UNDER THE INCOMPLETELY REVISED SPANISH PENAL CODE, "INSULTING" THE MILITARY REMAINS A CRIME, THE PROSECUTION OF WHICH IS LEFT TO MILITARY COURTS.) THE PLAY HAD REPORTEDLY BEEN APPROVED IN ADVANCE BY THE CULTURE MINISTRY AND WAS PERFORMED NUMEROUS TIMES AFTER ITS OPENING PERFORMANCE ON SEPTEMBER 6, 1977. BUT IT WAS CHARGED THAT THE CAST HAD DEVIATED FROM THE APPROVED TEXT, SPECIFICALLY IN THAT THE PLAY WAS TOO OBVIOUSLY ABOUT THE PUIG ANTICH/CHEZ TRIAL AND THAT THE OFFICERS OF THE COURT WERE PORTRAYED AS PREJUDICED AND DRUNK WHEN THEY ARRIVED

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AT THEIR DECISION. (WE ALSO WERE TOLD BY A PSOE CORTES DEPUTY THAT THIS MODIFIED VERSION OF THE PLAY HAD BEEN PARTICULARLY OFFENSIVE TO MILITARY LEADERS BECAUSE IT HAD PORTRAYED ONE MILITARY OFFICER SODOMIZING ANOTHER AND ONE OF THE DEFENDANTS BEING SEXUALLY MOLESTED BY THE OFFICERS OF THE COURT.)

4. THE ARRESTS ENGENDERED PERIODIC PROTESTS FROM THE ENTERTAINMENT WORLD -- THERE WAS A SHORT-LIVED THEATER STRIKE, FOR EXAMPLE -- AS WELL AS FROM POLITICAL, LABOR AND CULTURAL GROUPS WHO UNDERSTANDABLY VIEW THE ACTION AS A THREAT TO FREEDOM OF EXPRESSION AND ARTISTIC INDEPENDENCE HOWEVER, BECAUSE OF CONCERN OVER MILITARY SENSIBILITIES THESE PROTESTS HAVE BEEN MUTED AND THE NORMALLY COMBATIVE PRESS AS WELL AS OPPOSITION PARTIES HAVE BEEN CONSPICUOUSLY TENDER IN THEIR HANDLING OF THE CASE. BUT THE IMMINENCE OF THE TRIAL RAISED TEMPERATURES ALL AROUND, WITH SOME POLITICAL GROUPS CALLING ON THE MILITARY TO SURRENDER JURISDICTION TO THE CIVILIAN COURTS AND THE CATALAN LEFT (SOCIALISTS AND COMMUNISTS) ANNOUNCING ITS INTENTION TO INTERPELLATE THE GOVT ON THE CASE DURING THE PARLIAMENTARY QUESTION PERIOD. MORE RECENTLY, THE CATALAN SOCIALISTS (PSOE) REPORTEDLY INITIATED THE FIRST STAGE OF PARLIAMENTARY

CONSIDERATION OF A DRAFT LAW FORMALLY TRANSFERRING SUCH JURISDICTION TO THE CIVILIAN COURTS. WHETHER THIS IS FOLLOWED IN THE NOT TOO DISTANT FUTURE BY A FURTHER REVISION OF THE PENAL CODE ABOLISHING THE CRIME OF "INSULTING" THE MILITARY WILL DEPEND AT LEAST TO SOME EXTENT ON THE PARTIES' READING OF THE MOOD OF THE ARMED FORCES.

5. THE CAPTAIN GENERAL OF CATALONIA, FORMER ARMY MINISTER AND AMBASSADOR IN WASHINGTON FRANCISCO COLOMA GALLEGOS, WHO ORIGINATED THE CHARGES AGAINST THE TROUPE, HAS RESPONDED TO ALL OBJECTIONS BY STATING THAT HE IS

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SIMPLY ENFORCING THE LAWS ON THE BOOKS AND THAT IN A DEMOCRATIC SYSTEM IF THE LAWS ARE NOT SATISFACTORY IT IS UP TO THE PARLIAMENT TO CHANGE THEM. OUR CONSUL GENERAL IN BARCELONA ADVISES THAT A NUMBER OF HIS LEFTIST CONTACTS, THOUGH SYMPATHETIC TO BOADELLA, HAVE SAID HE SHOULD HAVE KNOWN COLOMA WOULD REACT TOUGHLY TO THE PLAY. BOADELLA SHOULD SIMPLY HAVE WAITED UNTIL COLOMA, WHO PASSES TO INACTIVE STATUS 26 APRIL 1978, HAD BEEN REPLACED AS CAPTAIN GENERAL BY A LESS RIGID COMMANDING OFFICER, THEY SAID.

6. AMCONGEN BARCELONA REPORTS THAT REPRESENTATIVES OF AMNESTY INTERNATIONAL, THE INTERNATIONAL COMMISSION OF JURISTS AND THE INTERNATIONAL COMMISSION FOR DEFENSE OF HUMAN RIGHTS HAD ANNOUNCED THEIR INTENTION TO ATTEND  
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THE TRIAL. WE UNDERSTAND THAT AN AMNESTY INTERNATIONAL REPRESENTATIVE WAS PRESENT OUTSIDE THE COURTROOM WHEN THE SUSPENSION WAS ANNOUNCED, AT WHICH TIME A FEW HUNDRED PEOPLE ALSO DEMONSTRATED AGAINST THE TRIAL AND INSISTED THAT "FREEDOM OF EXPRESSION" BE PROTECTED. THE GOVT OF COURSE IS WELL AWARE THAT THE ELS JOGLARS TRIAL TARNISHES THE IMAGE OF THE DEMOCRATIC TRANSITION HERE, AND BOADELLA'S FLIGHT AND THE SUSPENSION OF THE COURT MARTIAL HAVE EVOKED A COLLECTIVE SIGH OF RELIEF.

7. COMMENT: THE GOVT OBVIOUSLY IS EMBARRASSED BY THE VIOLATION OF FREE SPEECH INVOLVED IN THE ELS JOGLARS CHARGES, BUT THE KID GLOVES ATTITUDE OF THE OPPOSITION AND THE PRESS DEMONSTRATES THAT NO ONE WANTS TO MAKE POLITICAL HAY OUT OF THIS SENSITIVE MATTER AND THAT ALL OF THE MAJOR GROUPS TEND TO CONSIDER IT AN ABERRATION THAT TIME AND THE CONTINUING REFORM OF THE PENAL CODE WILL CORRECT. UNFORTUNATELY, THE CONTINUING LEGAL PENALTIES FOR "INSULTING" THE MILITARY, WHICH PERSIST BECAUSE OF BROADLY SHARED CONCERN OVER MILITARY SENSIBILITIES AND THE DESIRE TO GIVE THE ARMED FORCES NO PRETEXT TO ENTER POLITICS, PROVIDED A HYPERSENSITIVE MILITARY COMMANDER LIKE COLOMA THE MECHANISM FOR MAKING AN ISSUE OUT OF SOMETHING WHICH WOULD HAVE BEEN BETTER IGNORED. THE DRAFT LAW (PARA 4 ABOVE) WHICH WOULD TRANSFER JURISDICTION OVER SUCH "CRIMES" FROM MILITARY TO CIVILIAN COURTS WOULD REDUCE THE CONTROVERSY SURROUNDING SUCH TRIALS. BUT THE DEFINITIVE SOLUTION TO THE PROBLEM CAN ONLY BE THE ELIMINATION OF LAWS ABRIDGING FREEDOM OF SPEECH, AND THIS WILL DEPEND ON THE POLITICAL PARTIES' READING OF MILITARY ATTITUDES.

8. THE ELS JOGLARS CASE IS A MARKED EXCEPTION TO THE  
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HUMAN RIGHTS RULE IN SPAIN TODAY. RESPONSIBLE SPANIARDS REALIZE THAT THE COUNTRY IS CAUGHT IN A KIND OF LEGAL TIME WARP, WITH A PENAL CODE WHICH CONTINUES IN PART TO BE MORE APPROPRIATE TO AN AUTHORITARIAN SYSTEM THAN

A DEMOCRATIC ONE. THE GOVT HAS BEEN WORKING FOR MONTHS ON REVISING THE PENAL CODE IN DEMOCRATIC DIRECTIONS, AND HAS BEEN GENERALLY SUCCESSFUL DURING THE TRANSITION IN FAILING TO ENFORCE REPRESSIVE CARRY-OVER LEGISLATION THAT EITHER TIME OR CIRCUMSTANCES MADE IT IMPOSSIBLE TO CHANGE. ALTHOUGH ITS LUCK FINALLY RAN OUT IN THIS CASE, WE CONTINUE TO VIEW THE OVERALL HUMAN RIGHTS SITUATION HERE IN SPAIN AS HIGHLY POSITIVE. (MADRID 524, STATE 10275) STABLER

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## Message Attributes

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